

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 14, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08HD-071

HAWAII

Amend Prior Board Action of January 27, 2012, Item D-2, and Prior Board Action of April 25, 2008, Item D-9, Regarding Issuance of Direct Lease to United States of America, Department of Agriculture (USDA), for Research and Educational Purposes, Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-6-6: portion of 46. The Purpose of the Amendment is to Clarify that There is No Legal Access to the Proposed Lease Premises from a Public Highway, and to Include Requirements in the Proposed Lease that USDA Fence the West, North and East Sides of the Lease Premises and Reimburse Lessees under General Lease No. S-5320, Peter H. Jose and Richard A.J. Jose, \$1,560.00 for Their Costs Incurred in Clearing and Planting the Proposed Lease Premises in Grass.

BACKGROUND:

At its meeting of January 27, 2012, Item D-2, the Board of Land and Natural Resources amended its prior approval in principle of the issuance of a direct lease to the United States of America, Department of Agriculture (USDA), to allow for a lease of less than 20 acres to USDA for research and educational purposes on State lands at Laupahoehoe, North Hilo, Hawaii. In light of USDA's satisfaction of the Hawaii Revised Statutes Chapter 343 environmental assessment requirements for its project, the Board confirmed the issuance of the lease subject to USDA receiving final subdivision approval for its lease parcel, and additionally authorized the use of non-standard language in the lease relating to reserved mineral rights. See Exhibit A attached.

REMARKS:

USDA received final subdivision approval for a 3-acre parcel on April 27, 2012. In processing USDA's request for withdrawal of the parcel from General Lease No. S-5320 to Peter H. Jose and Richard A.J. Jose (the Joses), staff noted that the newly subdivided

parcel lacks access to a public highway.¹ As a result, USDA will need to traverse private lands owned by Kamehameha Schools / Bishop Estate (KSBE) as well as a portion of General Lease No. S-5320 to reach its subdivided lease premises.

USDA explains that it is negotiating an access easement with KSBE over its private lands. In light of this information, staff believes that the Board can proceed to issue the lease provided that USDA acknowledge and agree that there is presently no improved legal access from a public highway to the proposed USDA lease premises, and USDA shall be solely responsible for establishing any required access over private lands or over any other lands not under the Board's jurisdiction at USDA's sole cost and expense. Staff is recommending that a provision to this effect be included in the new lease to USDA.

In a companion submittal before the Board today, staff is recommending the withdrawal of the USDA lease area from General Lease No. S-5320. Applicant requirements in that submittal require USDA to fence the west, north and east boundaries of the withdrawn 3 acres to prevent livestock from escaping from the Joses' lease premises, and to reimburse the Joses \$1,560.00 for costs they incurred in clearing the 3-acre area of guava trees in the 1990s and planting it in grass suitable for pasture. Staff is including a recommendation below that these requirements be incorporated in the lease to USDA.

RECOMMENDATION: That the Board:

1. Amend its prior Board actions of January 27, 2012, Item D-2, and April 25, 2008, Item D-9, to state that provisions reading substantially as follows shall be included in the lease to USDA:

USDA acknowledges and agrees that there is presently no improved legal access from a public highway to the lease premises, and USDA shall be solely responsible for establishing any required access over private lands or over any other lands not under the Board's jurisdiction at USDA's sole cost and expense.

USDA shall install stock-proof fencing on the west, north and east sides of the lease premises at its own expense to prevent livestock on the premises of General Lease No. S-5320 from escaping, prior to any breach of existing fencing but no later than one year from commencement date of lease.

USDA shall reimburse Peter H. Jose and Richard A.J. Jose, lessees under General Lease No. S-5320, in the amount of \$1,560.00 for

¹ Staff notes that there is no improved legal access to the premises for General Lease No. S-5320 either. Staff is addressing this issue in a companion submittal before the Board today.

their costs incurred in clearing the lease premises of guava trees in the 1990s and planting it in pasture grass. Reimbursement shall be made within 90 days after both USDA and lessor have signed the lease.

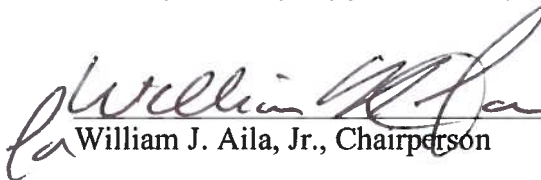
2. Except as modified by the foregoing amendment, all terms and conditions listed in its actions of January 27, 2012, Item D-2, and April 25, 2008, Item D-9 shall remain the same.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 27, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 08HD-071

HAWAII

Amend Prior Board Action of April 25, 2008, Item D-9, Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes; Amend Extensions of Approval Granted by Board Actions of April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8; Confirm Issuance of Direct Lease to United States of America, Department of Agriculture, for Research and Educational Purposes, Laupahoehoe, Hawaii, TMK: (3) 3-6-6: portion of 46

BACKGROUND:

At its meeting of April 25, 2008, Item D-9, the Board of Land and Natural Resources approved in principle the issuance of a direct lease to the United States of America, Department of Agriculture (USDA), for research, educational and housing facilities purposes on 20 acres of State lands at Laupahoehoe, North Hilo, Hawaii. The approval in principle required USDA to comply with Hawaii Revised Statutes (HRS), Chapter 343 relating to environmental assessments, obtain subdivision approval and provide survey maps and descriptions, all at USDA's own cost. USDA was to obtain HRS Chapter 343 compliance within 12 months of the initial Board approval of April 25, 2008. A copy of the approved Board submittal is attached as Exhibit 1.

USDA subsequently sought several extensions of the deadline for complying with HRS Chapter 343. At its meeting of April 24, 2009, Item D-2, the Board extended the deadline to December 31, 2009. At its meeting of January 8, 2010, Item D-10, the Board extended the deadline to December 31, 2010. And at its meeting of and December 9, 2010, Item D-8, the Board gave USDA until December 31, 2012 to achieve HRS Chapter 343 compliance.

USDA satisfied the HRS Chapter 343 requirement when the Department of Land and Natural Resources issued a finding of no significant impact for the project that was published in the Environmental Notice on September 23, 2011. See Exhibit 2 attached.

REMARKS:

Originally, USDA intended to develop all of its administrative and education facilities on the 20-

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *1/27/12*
January 27, 2012

EXHIBIT A

D-2

acre lease site. In the years since the initial Board approval, however, USDA acquired private properties in the area with existing buildings, which reduces its need for facilities on the State land. At present, USDA intends to construct a 20' x 30' open pavilion on the lease site, together with a vault toilet building and a gravel parking lot for 10 vehicles. These facilities will be used as a field education site and will occupy a maximum of three acres. See USDA letter dated November 16, 2011 attached as Exhibit 3.

The zoning for the subject land is A-20a (agriculture, 20-acre lot minimum size). However, the County of Hawaii Planning Department has advised USDA that its project is eligible for an exception to the minimum lot size. USDA has therefore decided to reduce the area sought for a lease of State lands to the three acres needed for the portion of the project to be located on the lease premises. In order to have the greatest flexibility as it pursues the subdivision of the parcel, USDA is requesting that the prior approval in principle be amended to authorize a lease of 20 acres or less. Staff is therefore including a recommendation below that the prior Board actions be amended to approve in concept a lease of 20 acres or less wherever the land area of the proposed lease is referenced in the prior submittals.

An additional amendment to the initial Board action of April 25, 2008, Item D-9 is required to change the Character of Use of the lease from "Research, Educational and Housing Facilities Purposes" to "Research and Educational Purposes". Housing facilities are no longer proposed for the State lands.

In the April 25, 2008 Board submittal, staff noted an issue with the standard reservation of mineral rights provision the State uses in its leases. The submittal explains that in another lease of State lands on the Big Island (General Lease No. S-5649), USDA had requested the State to waive its mineral rights to the land. However, the language that was ultimately agreed upon in that lease is as follows:

Reservations: BLNR reserves the following:

(a) All minerals, excepting sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the USDA's permitted activities on the premises and not for sale to others. However, BLNR and its successors and assigns will not exercise the reservation to the detriment of USDA.

(b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same. However, BLNR will not exercise this right to the detriment of the USDA.

Staff is including a recommendation below that the Board approve this same language for use in the subject lease to USDA.

Staff will need to return to the Board when subdivision is complete to obtain the Board's approval of the withdrawal of the legally subdivided parcel from the pasture lease to Peter Jose

and Richard Jose under General Lease No. S-5320.

RECOMMENDATION: That the Board:

1. Amend its prior Board actions of April 25, 2008, Item D-9, April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8, to change any reference to an approval in concept of a lease of 20 acres to an approval in concept of a lease of 20 acres or less to the United States of America, Department of Agriculture.
2. Amend its prior Board actions of April 25, 2008, Item D-9, April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8, to change any reference to the character of use of the proposed lease from "Research, Educational and Housing Facilities Purposes" to "Research and Educational Purposes."
3. Amend its prior Board action of April 25, 2008, Item D-9, to state that the standard reservation of mineral and water rights provision used in the lease form prepared by the Department of the Attorney General shall be replaced with the following:

Reservations: BLNR reserves the following:

- (a) All minerals, excepting sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the USDA's permitted activities on the premises and not for sale to others. However, BLNR and its successors and assigns will not exercise the reservation to the detriment of USDA.
 - (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same. However, BLNR will not exercise this right to the detriment of the USDA.
4. Confirm the approval of a direct lease to the United States of America, Department of Agriculture, for research and educational purposes on 20 acres or less of the subject lands, subject to USDA complying with the Applicant requirements set forth in the Board's approval of April 25, 2008, Item D-9, as amended.

5. Except as modified by the foregoing amendments, all terms and conditions listed in its actions of April 25, 2008, Item D-9, April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8 shall remain the same.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08HD-071

HAWAII

Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes at Laupahoehoe, Hawaii, Tax Map Key: (3) 3-6-6:portion of 46

APPLICANT:

United States of America, Department of Agriculture, acting by and through the Administrator, Agricultural Research Service, whose business and mailing address is 60 Nowelo Street, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-95(a)(2), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Laupahoehoe, North Hilo, Hawaii, identified by Tax Map Key: (3) 3-6-6:portion of 46, as shown on the attached map labeled Exhibit A.

AREA:

20.00 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-20A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-5320, Peter Jose and Richard Jose, Lessee, for pasture purposes. Lease to expire on June 29,

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

April 25, 2008

EXHIBIT 1

2028

CHARACTER OF USE:

Research, Educational and Housing Facilities Purposes

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Gratis.

PROPERTY CHARACTERISTICS:

Utilities - not available

Slope - gently sloping to steep

Elevation - 1,000 to 4,500 feet

Rainfall - 150 inches to 300 inches

SCS Soil Series - Akaka Series consists of moderately well drained silty clay loams that formed in volcanic ash.

Land Study Bureau -

Legal access to property - Staff has verified that there is legal access to the property off of Old Waipunalei Road.

Subdivision - Staff has verified that the subject property is a legally subdivided lot.

Encumbrances - Staff has verified that the following encumbrances exist on the property: None

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This is a request for the Land Board's approval in principle of a lease to the United States of America, Department of Agriculture and authorization for the United States of America, Department of Agriculture to comply with Chapter 343, Hawaii Revised Statutes, as amended.

DCCA VERIFICATION:

Not applicable. Government agency.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Prepare and process, at its own cost, all necessary studies

- and documentation for compliance with Chapter 343, Hawaii Revised Statutes, as amended;
- 2) Process and obtain subdivision at Applicant's own cost; and
 - 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

General Lease No. S-5320 was issued to Richard Jose under Act 237, Session Laws of Hawaii 1988. The Act gave the Department authority to convert month-to-month agricultural revocable permits to long-term leases.

At its meeting of February 10, 1995, under agenda Item F-1-d, the Board consented to the assignment of General Lease No. S-5320 from Richard Jose to Peter Jose and Richard Jose.

The Land Board at its meeting of March 28, 2008, under agenda Item D-6, approved to recommend to the Governor a set aside covering 110.00 acres to the Department of Land & Natural Resources, Division of Forestry & Wildlife for addition to Hilo Forest Reserve purposes.

ANALYSIS:

On March 23, 2007, the Hawaii Experimental Tropical Forest (HETF) was established. The HETF includes parts of the Laupahoehoe Natural Area Reserve (NAR). In support of the HETF, the Division of Forestry and Wildlife (DOFAW) cooperatively with the United States of America, Department of Agriculture, Forest Service would like to establish a research, educational, and housing facilities (research station) to support the work to be done at the HETF on the twenty (20) acres of land under the General Lease No. S-5320 that are adjacent to the Laupahoehoe NAR.

The Lessee has been contacted and the parties are working on the configuration of the proposed research station.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The Applicant has another State lease - General Lease No. S-5649. The 30 acres site in Hilo is near the UH Hilo Campus Technology Park and contains buildings for research, outreach, and education/training.

If Land Board approval in principal is obtained, the United States of America, Department of Agriculture will pursue compliance with Chapter 343, Hawaii Revised Statutes, as amended and incorporate agency and community comments.

Staff is recommending the issuance of a right-of-entry permit. This will allow the United States of America, Department of Agriculture and their consultants to conduct the necessary field studies, surveys, and subdivision of the subject 20 acre property.

DOFAW has indicated that it would assume management of the new lease.

There are two (2) issues that will be addressed in the final approval for the issuance of the lease. Prior to the execution of General Lease No. S-5649, the United States of America, Department of Agriculture requested the Land Board to waive its mineral rights pursuant to Section 182-2, HRS. The Land Board would have to make a finding that the proposed use is of greater benefit to the State of Hawaii than mining after holding the required public hearing. The 20 acres will need to be withdrawn from General Lease No. S-5320.

RECOMMENDATION: That the Board:

1. Approve in principle, a new direct lease to the United States of America, Department of Agriculture, subject to the following:
 - A. At its own cost United States of America, Department of Agriculture shall pursue satisfactory compliance with Chapter 343, Hawaii Revised Statutes, as amended, and obtain a finding of no significant impact (FONSI) within twelve (12) months of the Land Board's approval;
 - B. Should United States of America, Department of Agriculture fail to obtain satisfactory compliance with Chapter 343, Hawaii Revised Statutes, as amended, within twelve (12) months, the Land Board's approval shall be considered rescinded;
 - C. United States of America, Department of Agriculture acknowledges the following:
 - i) All costs associated with the necessary compliance with Chapter 343, Hawaii Revised Statutes, as amended, shall be borne by the United States of America, Department of Agriculture;
 - ii) All costs associated with the subdivision of the 20 acres, shall be borne by the United States of America, Department of Agriculture; and
 - iii) That this action is an approval in principle and does not provide any assurance of a direct lease and such approval of a direct lease shall be subject to consideration by the Land Board under a separate action after satisfactorily complying with Chapter 343, Hawaii Revised Statutes, as amended.
 - D. Authorize the United States of America, Department of Agriculture to act as agent of the landowner, State of Hawaii to process the subdivision of the subject 20 acres.

April 25, 2008

- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Authorize the issuance of a right-of-entry permit to United States of America, Department of Agriculture covering the subject area, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

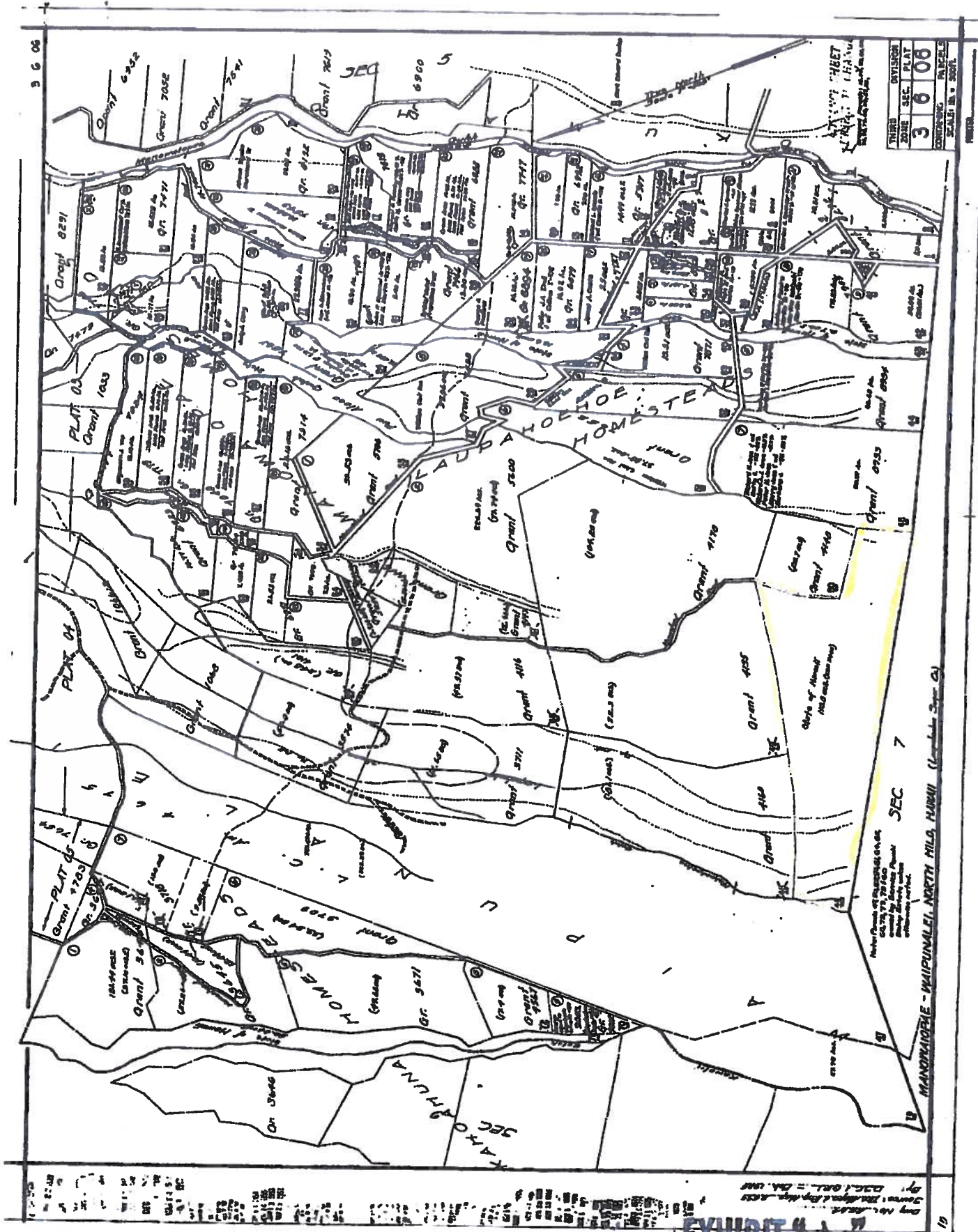
Charlene E. Unoki

Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laure H. Thielen, Chairperson



Approximate location of the proposed 20 acre lease site to the US Forest Service. The Blue line is Blair road. The white line is the boundary between the DOFAW (HETF) and the current Jose lease.

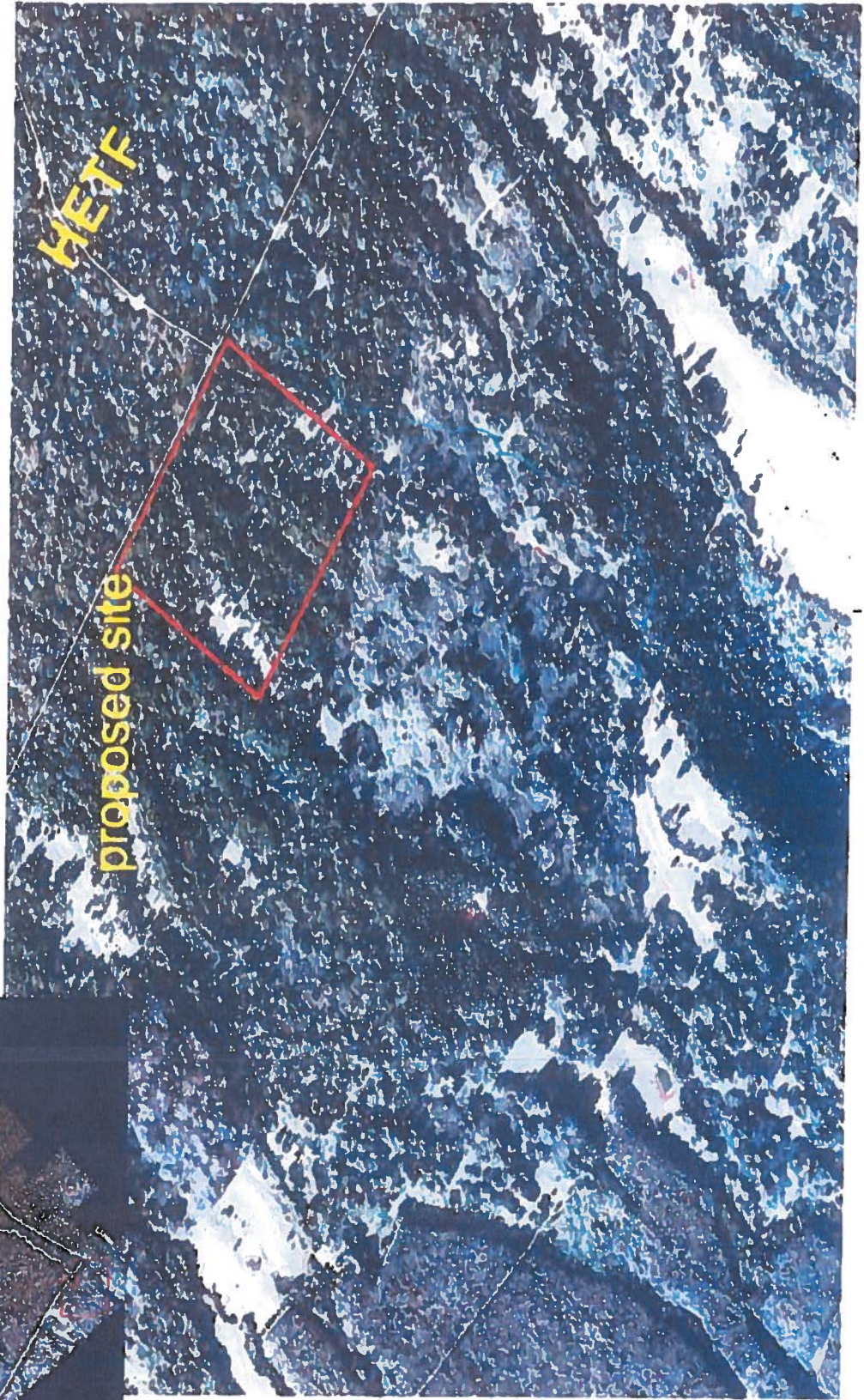


EXHIBIT "A"

Status: Anticipated Finding of No Significant Impact. 30-day comment period begins; comments are due on October 22, 2011. Send comments to the Applicant and the Consultant

The West Hawai'i Explorations Academy (WHEA) proposes to relocate its campus within the Natural Energy Laboratory of Hawai'i Authority (NELHA) from a shoreline property to a more suitable site away from the Kona International Airport and outside the tsunami evacuation zone. The new site will be in an area of NELHA with access to the seawater that forms the basis of many of the hands-on scientific curriculum at the school. The permanent campus would allow for the eventual expansion from 195 to 300 students in the 7th to the 12th grades. The school will have solar hot water, a 10 kW photovoltaic system, xerophytic landscaping, and many other environmentally advanced features that both reduce energy use and serve for education in high technology, energy and environmental engineering, including alternative wastewater treatment technologies. Impacts include grading of the *pahoehoe* surface and associated minor impacts on sedimentation, dust, noise, and visual quality, all of which will be temporary and mitigated as feasible. No archaeological sites are present on or near the site. A few individuals of the relatively rare plant *maiapilo*, the designated school flower, are present on and surrounding the site. These plants will be salvaged as practical and *maiapilo* plants will be used for landscaping.

**4. Hawai'i Experimental Tropical Forest, Laupahoehoe
Construction Final EA (FONSI)**

Island: Hawai'i
District: North Hilo
TMK: 3rd/3-6-06: 14; 16; 37; 38; 39; 46; 47; 50; & 82
Permits: US Army Corps of Engineers, Section 404, Clean Water Act; State of Hawai'i Department of Health, National Pollution Discharge Elimination System Permit; US Fish and Wildlife Service, Informal Consultation on project effects upon Threatened and Endangered Species



Proposing/Determination

Agency: Department of Land and Natural Resources Land Division, 75 Aupuni Street, Room 204, Hilo, Hawai'i 96720. Contact: (808) 974-6203
Consultant: Enterprise Technical Services, USDA Forest Service, Lolo National Forest, Building 24, Fort Missoula, Missoula, Montana 59804. Contact: John Slown, (406) 329-3749
Status: Finding of No Significant Impact (FONSI) determination

The Pacific Southwest Research Station in Hilo, Institute of Pacific Islands Forestry, USDA Forest Service proposes to develop a research and education facility near the recently established Hawai'i Experimental Tropical Forest (HETF). This facility would include construction of an educational pavilion, vault toilets, equipment storage space, and associated parking on lands leased from the Hawai'i Department of Land and Natural Resources (portion of TMK#360006046). Bunkhouse facilities to accommodate up to 30 visiting scientists or students, classroom space, storage areas, restrooms, a caretaker residence, and associated facilities would also be constructed or renovated on lands of the Forest Service (TMK #360006014, 360006016, & 360006082). An access route to the HETF proposed for this project would include approximately 0.7 miles of new road.

The direct, indirect, secondary and cumulative impacts associated with the project would be localized impacts to the visual environment within the Immediate project vicinity. These would be mitigated on a larger scale by screening effects of vegetation and terrain. Other measurable impacts would be short-term, occurring during the construction phase, such as soil disturbance, habitat displacement and increased noise. No significant impacts to any resource are anticipated. The issuance of a Finding of No Significant Impact for this project is anticipated.

The DEA for this project was published in the July 8, 2011, edition of *The Environmental Notice*.



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Research
Station

Institute of Pacific Islands Forestry
60 Nowelo Street
Hilo, HI 96720
(808) 933-8121 Fax: (808) 933-8120

2011 NOV 23

File Code: 1560

Date: November 16, 2011

RECEIVED
LAND DIVISION
HILO, HAWAII

Mr. Kevin E. Moore

Land Division

Department of Land and Natural Resources

P.O. Box 621

Honolulu, HI 96809

Reference: Approval in Principle of Direct Lease to the United States of America, Department of Agriculture, for Research and Education purposes for the Hawaii Experimental Tropical Forest (HETF) at Laupahoehoe, Hawaii, Tax Map Key: (3) 3-6-6: Portion of 46 - 4/25/2008.

PSF No. : 08HD-071

Dear Mr. Moore,

The United States Department of Agriculture (USDA) Forest Service originally requested, and received an approval in principle, to lease a 20-acre parcel adjacent to the Laupahoehoe Natural Area Reserve (NAR) boundary based on county zoning for the area, Agriculture A-20a. The Forest Service respectfully requests that the Board of Land and Natural Resources (BLNR or "Board") consider a smaller acreage for the Direct Lease than originally proposed because planned development at the site has been reduced and issues related to ongoing grazing at the site have emerged. The area planned for the proposed Field Education Site would be limited to 3 acres. (See attached map)

The original approval in principal of a direct lease was granted April 25, 2008 (agenda item D-9, reference #08HD-071). Previous modifications to the project have been documented in submittals to the Board requesting extensions of time to complete requirements for the Direct Lease, including: 4/24/2009 agenda item D-2; 1/10/2010 agenda item D-10; and most recently 12/9/2010 agenda item D-8 (granting an extension of time until 12/31/2012). These alterations and additions to the project have all been proposed for the benefit of the project's goals for education, research, and fiscal responsibility. On September 2, 2011, the BLNR released the Finding of No Significant Impact for the HETF Laupahoehoe Construction Project, which includes construction on parcels now owned by the Forest Service.

The Forest Service's original plan was to develop all of its administrative and education facilities on the 20 acre leased site. We since were able to purchase properties in the community with existing buildings, greatly reducing our need for new facilities on the site proposed for a Direct Lease to a 20-foot by 30-foot open pavilion, a vault toilet building and a gravel parking lot for 10



vehicles. These facilities will be used as a field education site and will occupy a maximum of 3 acres.

Since the project has been reduced in scope and complexity, County of Hawaii planning officials have advised us that we no longer need to pursue a 20 acre minimum (A-20a) subdivision. They have proposed processing the smaller subdivision under Section 23-13, large scale developments of the Subdivision Code. That section states "The Director may make exceptions to this chapter where a plan and program for a complete community, a neighborhood unit, a large scale shopping center, large industrial area development, or a large agricultural area development provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated and covenants or other legal provisions to assure conformity to and achievement of the plan."

The 110 acres of State land upon which the proposed lease is located (total acreage of TMK:(3) 3-6-6) are currently leased for grazing and the Forest Service has no objection to continued grazing by the permittee on the area outside of the 3-acre proposed field education site. For this reason as well as our reduced need for land, we are seeking to reduce the size of the Direct Lease and subdivision to the minimally required area, so that the permittee's grazing may continue under the State permit on all areas outside of the direct lease to the United States (currently anticipated to be 3 acres).

In summary, the Forest Service would like to withdraw its current subdivision and variance requests. We understand that the BLNR must approve the reduced acreage Direct Lease before we can apply for the smaller subdivision with the County. An Approval in Principle which recites a lease area of "20 acres or less" would provide the greatest flexibility, as we are submitting this request to the BLNR prior to making any changes in our application to the County for the subdivision.

Another issue that we would like to raise for the Board's consideration relates to language in the proposed Direct Lease regarding the exercise of mineral rights on the leased area. We understand that the State typically reserves all mineral rights and mineral development on lands leased by the State, absent a public hearing and a Board determination that the existing or proposed use of the land under the lease would be of greater benefit to the State than mining use of the land. Because Department of Justice title standards and Forest Service policy restrict our ability to acquire interests in land, including long-term leases, where there are outstanding mineral rights which, if exercised, could interfere with our contemplated use of the land, we request that the Board approve inclusion of the same wording in the proposed lease that was used in the USDA's existing lease for the Pacific Basin Agricultural Research Center and Institute of Pacific Islands Forestry facilities located on the University of Hawaii campus in Hilo (General Lease No. S-5649, dated April 16, 2002). That lease contained the following provision:

2. Reservations: BLNR reserves the following: (a) All minerals, excepting sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the USDA's permitted activities on the premises and not for sale to others. **However, BLNR and its successors and assigns will not exercise this reservation to the detriment of USDA.** (Emphasis added.)

We are seeking confirmation from the Board that this quoted language can be similarly included in the proposed direct lease to the United States of land adjacent to the Laupahoehoe NAR boundary for a field education site.

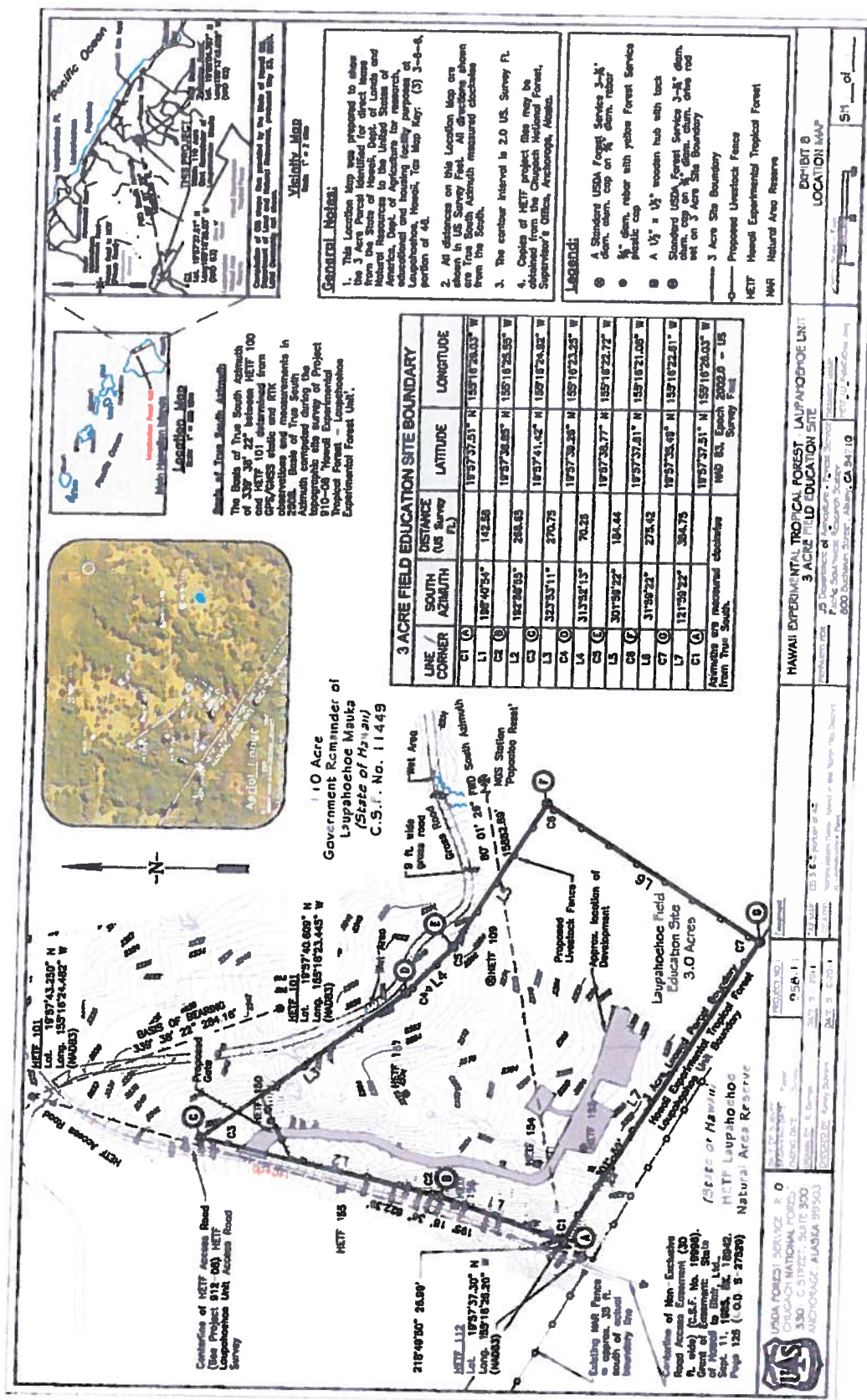
I appreciate your cooperation and consideration of these requests. The Laupahoehoe Unit of the Hawaii Experimental Tropical Forest provides unique research and education opportunities and these facilities will support a long and fruitful relationship with the Laupahoehoe community, County of Hawaii, and the State.

If you have any questions or concerns please don't hesitate to contact Melissa Dean our HETF Coordinator at 808-854-2651, email mkdean@fs.fed.us or contact me at 808-854-2601, email pmanley@fs.fed.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Manley', with a long horizontal flourish extending to the right.

Patricia N. Manley, Ph.D.
Program Manager, Conservation of Biodiversity
Pacific Southwest Research Station Hilo
Institute of Pacific Island Forestry



Land Description

Hawaii Experimental Tropical Forest Laupahoehoe Unit 3 Acre Field Education Site Exhibit A

An area within the 110 Acre Government Remainder at Laupahoehoe Mauka, C.S.F. No. 11449, Laupahoehoe, North Hilo, Island of Hawaii, Hawaii, located east of the Hawaii Experimental Tropical Forest 10 Ft wide Access Road and south of and abutting the Hawaii Experimental Tropical Forest Laupahoehoe Unit Natural Area Reserve as shown on the attached map entitled "Hawaii Experimental Tropical Forest Laupahoehoe Unit 3 Acre Field Education Site Location Map, Exhibit B", said map being made part of this description and said area being more particularly described as follows:

Beginning at the southwest corner of this parcel of land, said corner being a 3 1/4" diam. USDA aluminum cap located on the Hawaii Experimental Tropical Forest Laupahoehoe Unit Natural Area Reserve Boundary approx. 16 feet east of the centerline of the HETF Access Road, said USDA aluminum cap being corner 1 of the HETF 3 Acre Field Education Site and said cap being the True Point of Beginning and designated "A" on the referenced map (position approx. 19° 57' 37.51" N, 155° 16' 26.03" W) The coordinates of said Point of Beginning referred to Government Survey Triangulation Station "PAPAALOA RESET" being 2,751.30 feet South and 15,642.79 feet West, thence running by azimuths measured clockwise from True South;

- 1) 198° 40' 54", 142.58 ft to a 3 1/4" diam. USDA aluminum cap, located approx. 11 feet east of centerline of the HETF Access Road, said cap being corner 2 of the HETF 3 Acre Field Education Site and designated "B" on the referenced map (position approx. 19° 57' 38.85" N, 155° 16' 25.55" W);
- 2) 192° 58' 55", 266.65 ft to a 3 1/4" diam. USDA aluminum cap located approx. 14 feet east of the centerline of the HETF Access Road, said cap being corner 3 of the HETF 3 Acre Field Education Site land designated "C" on the referenced map (position approx. 19° 57' 41.42" N, 155° 16' 24.92" W);
- 3) 323° 53' 11", 270.75 ft to a 3 1/4" diam. USDA aluminum cap located approx. 12 feet north of the centerline of an 8 ft wide grass road, said cap being corner 4 of the HETF 3 Acre Field Education Site and designated "D" on the referenced map (position approx. 19° 57' 39.26" N, 155° 16' 23.25" W);
- 4) 313° 52' 13", 70.26 ft to a 3 1/4" diam. USDA aluminum cap located approx. 26 feet north of the centerline of an 8 ft wide grass road, said cap being corner 5 of the HETF 3 Acre Field Education Site and designated "E" on the referenced map (position approx. 19° 57' 38.77" N, 155° 16' 22.72" W);
- 5) 301° 59' 22", 184.44 ft along a line 275.42 feet from and parallel with the Hawaii Experimental Tropical Forest Laupahoehoe Unit Natural Area Reserve Boundary to a 3 1/4" diam. USDA aluminum cap, said cap being corner 6 of the HETF 3 Acre Field Education Site and designated "F" on the referenced map (position approx. 19° 57' 37.81" N, 155° 16' 21.08" W);

- 6) 31° 59' 22", 275.42 ft to a 3 1/4" diam. USDA aluminum cap located on the Hawaii Experimental Tropical Forest Laupahoehoe Unit Natural Area Reserve Boundary, said cap being corner 7 of the HETF 3 Acre Field Education Site and designated "G" on the referenced map (position approx. 19° 57' 35.49" N, 155° 16' 22.61" W);
- 7) 121° 59' 22", 384.75 ft along the Hawaii Experimental Tropical Forest Laupahoehoe Unit Natural Area Reserve Boundary to the True Point of Beginning and containing an AREA OF 3 ACRES

Reference Datum is NAD-83. Azumiths measured clockwise from True South. Compiled from survey measurements and data provided by Randy Schrank and William Nielson, Federal Land Surveyors with the USDA Forest Service, Region 10, Alaska; CSF's No. 11449 and 19996. Tax Map Key (3) 3-6-6; portion of 46.

End of Description